

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR
S.B. HON'BLE SHRI JUSTICE VIJAY KUMAR SHRIVASTAVA
FIRST APPEAL No. 167/2004

Appellant
Plaintiff

:

Santosh Kumar Tripathi,
S/o. late T.P. Tripathi,
aged about 43 years,
r/o. Qr. No.13/C, Street No.11,
Sector-1, Bhilai Nagar,
Dist. Durg (CG).

Versus

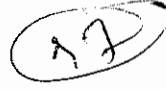
Respondent
Defendant

:

Smt. Saroj Tripathi,
W/o. Santosh Kumar Tripathi,
aged about 41 years,
r/o. C/o. Gaya Prasad Mishra,
village. Dhendhar, Tahsil Tyonthar,
Dist. Rewa (M.P.)

Post for judgment 13/05/2005

Sd/-
V.K.Shrivastava
Judge



HIGH COURT OF CHHATTISGARH AT BILASPUR
S.B. HON'BLE SHRI JUSTICE VIJAY KUMAR SHRIVASTAVA
FIRST APPEAL No. 167/2004

Appellant : **Santosh Kumar Tripathi,**
 Plaintiff S/o. late T.P. Tripathi,
 aged about 43 years,
 r/o. Qr. No.13/C, Street No.11,
 Sector-1, Bhilai Nagar,
 Dist. Durg (CG).

Versus

Respondent : **Smt. Saroj Tripathi,**
 Defendant W/o. Santosh Kumar Tripathi,
 aged about 41 years,
 r/o. C/o. Gaya Prasad Mishra,
 village. Dhendhar, Tahsil Tyonthar,
 Dist. Rewa (M.P.)

PRESENT:

Mr. Sachin Singh Rajput, Counsel for the appellant.

Mr. Sanjay S. Agrawal, Counsel for the respondent.

J U D G M E N T

13th
 (Delivered on May, 2005)

This appeal has been directed against the judgment and decree dated 23/06/2004 passed by Vth Additional District Judge, Durg (CG) in Civil Suit No.2A/2003 whereby the suit for grant of divorce has been dismissed.

2) Appellant and respondent belong to Hindu religion and are governed by Hindu rites and rituals. In the month of May 1978 the marriage of appellant and respondent was solemnized, according to Hindu rites , rituals and customs at village Dhendhar, Tahsil Tyonthar,

12

District Rewa (MP). At present, appellant and respondent are living separate from each other.

3) Appellant filed an application under Section 13 (1) (ia) and (ib) for grant of divorce on the ground of cruelty and desertion. Averments made by the plaintiff/appellant are that for the first time respondent came to her matrimonial house at Bhilai in the year 1983 to live with appellant, she remained there for one year and left for her parental house. Again in the year 1987 she came back to her matrimonial house to live with appellant and lived for around one year and again left for her parental house. She came to her matrimonial house back for the last time in the month of February, 1994 to live with the appellant and after staying for about 11 months, in the month of December, 1994 she again left for her parental home and since then she is residing in her parental house and is not returning back despite appellant's sincere continuous efforts. In the year 1992 appellant received severe injuries in an accident, but the respondent although informed, did not come back. During pendency of the petition she made a complaint before the Superintendent of Police, Rewa, alleging that the appellant and his mother had demanded dowry and subjected her to cruelty. Police found the said complaint false, hence did not prosecute the appellant. The said complaint caused mental torture to the appellant.

4) Respondent denied the allegations leveled against her and averred that after marriage she was subjected to cruelty by the appellant and the appellant himself used to drive her away from her matrimonial house off and on. The information regarding mishap causing various

injuries to the appellant, had not been given to her, but when she came to know the same from her relative, she came to her matrimonial house and served her husband and since then she remained in her matrimonial house. The appellant apologized before the Police and assured her not to treat with cruelty, demanding dowry and also assured that he will take her back, but the appellant did not take the respondent back to her matrimonial house. Respondent had ever been ready and even during reconciliation proceeding she was ready to live with her husband/appellant.

5) Learned trial Court, after due appreciation of evidence held that it was not proved that respondent treated the appellant with cruelty and deserted her since 1994. Accordingly, vide impugned judgment and decree dismissed the petition filed by the appellant for grant of divorce.

6) Both the parties are heard. Record of lower Court perused.

7) For desertion following two conditions are required to be proved.

1) Desertion of the petitioner by the opposite party without reasonable cause and without consent or against the wish of the petitioner; and 2) Desertion by willful neglect of the petitioner should be established or to say by desertion the party deserting has intention to end the marital tie.

8) Santosh Kumar Tripathi (AW/1) in his statement has deposed that in the month of December, 1994 respondent in his absence

(20)

and without intimating him left for her parental house. In rebuttal, respondent Smt. Saroj Tripathi (NAW/1) has deposed that the appellant himself in the month of September/October, 1994 took her to her parental house and left there and since then she is living in her parental house. In cross-examination also she was firm to say the same. Admittedly, respondent is a resident of village Dhendhar, Dist. Rewa and her matrimonial house is at Bhilai Nagar, Dist. Durg. A woman of an interior village without any assistance traveled such a long distance alone and went to her parental house, can only be established by substantial evidence, but the appellant did not adduce any evidence to show by which means and how respondent alone was able to travel such a long distance. Therefore, for want of such evidence, the evidence of respondent Smt. Saroj Tripathi (NAW/1) is acceptable which shows that the appellant himself took her to her parental house and left there in the month of September/October, 1994.

9) Santosh Tripathi (AW/1) although deposed that he made various efforts to bring the respondent back, but she did not come back. He failed to disclose the details of those efforts whereas, in rebuttal, Smt. Saroj Tripathi (NAW/1) has stated that the appellant after leaving her in the year 1994, never came to take her back. She has also deposed that in the month of April, 1995 she herself came along with her brother and made efforts to live with the appellant, but the appellant did not even talk to her and when she tried to talk, he pushed and drove her away. Again she came to her matrimonial house along with her brother, but at that time also appellant told her brother that I had not performed the marriage, but his father did it, therefore, he should contact him.

(20)

10) From the aforesaid evidence it is apparent that the appellant did not make any endeavor to keep his wife/respondent whereas respondent herself made efforts to live with her husband/respondent. Admittedly, in reconciliation proceeding respondent was ready to live with her husband/appellant. Respondent in her written statement also specifically offered to live with her husband whereas appellant Santosh Kumar Tripathi (AW/ 1) in his statement deposed that he is not ready to keep the respondent with him.

11) From the aforesaid discussion, it is manifest that respondent is residing in her parental house since September/October, 1994 at the wish of the appellant and she has not deserted her husband/appellant with an intent to terminate the marriage whereas she has been left by her husband/appellant without any reasonable cause. Therefore, learned trial Court after minutely appreciating the evidence rightly held that desertion by respondent has not been proved.

12) Section 23 (1) (b) of the Hindu Marriage Act is reproduced below:

"23 Decree in proceedings - (1) In any proceeding under this Act, whether defended or not, if the Court is satisfied that-
(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of Section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty."

122

13) From the bare reading of the said provision, it is manifest that if decree of divorce has been sought on the ground of cruelty the petitioner must not have condoned the cruelty. In that case only the ground of cruelty for divorce is available to the petitioner.

14) In the present case, as per plaint averment itself, the appellant received injuries in an accident in the month of September, 1992. In the month of February, 1994 respondent came and lived with him for about 11 months as his wife. Apparently, if any cruelty was caused by the respondent by not coming in time to see her husband, who received injury in an accident, the said cruelty has been condoned by the appellant. Therefore, the said ground was not available to him. Apart from that, there is no evidence to establish that when the appellant met with an accident it was communicated to the respondent, therefore, it was not expected from respondent that without any information she should have come and served her husband.

15) To prove that respondent has leveled allegation against the appellant regarding harassment by the appellant on the demand of dowry, it was necessary to prove the said complaint or by other specific evidence the said allegation should have been proved. But, the said complaint has not been got produced and proved. Smt. Saroj Tripathi, wife of appellant has made false allegation before Police against the appellant, in fact to establish the same no evidence is on record. Notice (Ex P/1) issued by Superintendent of Police, Rewa to the appellant cannot prove the complaint and allegations made therein by the respondent.

(23)

16) Therefore, appellant has failed to prove that after marriage respondent treated him with cruelty. Learned trial Court after minutely evaluating the evidence on record holding that cruelty against appellant has not been proved, has not committed any illegality or irregularity.

17) Appellant relied on the decisions rendered by Hon'ble Apex Court in **Praveen Mehta Vs. Inderjit Mehta**, reported in AIR 2002 SC 2582 and **Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi**, reported in AIR 2002, SC 88, but both the cases are distinguishable on facts with the present case.

18) In the result, appeal fails and is dismissed accordingly.

Sd/-
V.K.Shrivastava
Judge